

LICENSING ACT 2003

- 4 **APPLICATION FOR A REVIEW OF A PREMISES LICENCE - VIVO
(FORMERLY THE VELVET LOUNGE), SIDWELL STREET, EXETER** 1 - 18

To consider the report of the Head of Environmental Health Services.

(Report circulated)

Part II: Item suggested for discussion with the press and public excluded

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

- 5 **APPLICATION FOR ISSUE OF A STREET TRADING LICENCE** 19 - 20

To consider the report of the Head of Environmental Health Services.

(Report circulated to Members)

Membership of the Sub-Committee will be drawn from the following members of the Licensing Committee:-

Councillors Noble (Chair), Branston, Cole, Mrs Danks, Gale, Mitchell, Newby, Shiel, R Smith, Sterry, Wadham and Winterbottom

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Exeter City Council

REPORT TO LICENSING SUB-COMMITTEE 4/02/2009

APPLICATION BY ENVIRONMENTAL PROTECTION SECTION

APPLICATION FOR; Review of a Premises Licence

REPORT BY Principal Licensing Officer

PART I

1. THE APPLICATION

- 1.1 **Applicant** Exeter City Council [Ms L.Cocks]
- 1.2 **Premises** VIVO [formerly trading as Velvet Lounge]
- 1.3 **Application:** To seek a REVIEW of the premises licence relating to these premises as set out in **pages 4-9**
- 1.4 Reason for the review; prevention of Public Nuisance

PART II

2. RELEVANT REPRESENTATIONS

- 2.1 Representations have been received from Ms Cocks of the Environmental Protection section The details of the application are attached at **page 7**
- 2.2 The review was submitted on the 15 December citing a number of interventions by e.g. the Out of Hours service and following complaints from residents in the area culminating in the serving of a Noise Abatement Notice served on the 12 November
- 2.3 On the 16 December Kitson Hutchings solicitor's acting on behalf of Charles Gordon Ltd submitted an application to transfer the licence from Mentor Inns, the Company named on the Noise Abatement Notice page 10. Additionally an application was received at that time to transfer the designated Premises Supervisor, Mr Duncan

Forbes being the new incumbent of the post at these premises **page 11**. No person currently managing the premises has any involvement with the previous management of the premises.

- 2.4 The Devon and Cornwall Constabulary have submitted information from statistics that relate to these premises but all of which pre-date the change of management.
- 2.5 One representation has been received from a person living in the vicinity of the premises. Appended to the letter seeking review are the names of other living in the vicinity but no additional comments were included.
Pages 13-14

PART III

3. RELEVANT LICENSING POLICY CONSIDERATIONS

3.1 Licensing Objectives

- 3.1 The statement of licensing Policy states in part that the impact of licensable activities on people living in the vicinity of the premises must not be disproportionate or unreasonable. **Page 15 para 17.1**

PART IV

4. RELEVANT STATUTORY PROVISIONS AND OFFICIAL GUIDANCE CONSIDERATIONS

4.1

- 4.1 Official Guidance issued under section 182 of the Licensing Act 2003 states in part that consideration might be given to conditions that would redress the concerns of the Responsible Authorities and Interested party. One of the sanctions available is to issue an informal warning to the licence holder and recommend improvement within a period of time. **Page 16-17**

PART V

5. OBSERVATIONS

- 5.1 The Committee are asked to determine the application for review as set out in **Pages 4-9** The Committee is obliged to determine this application with a view to upholding the Licensing Act 2003 objectives, which is in this case, public nuisance.
- 5.2 The Committee is obliged to have regard to Council's own Licensing Policy as at **page 15** and the Statutory Guidance at **pages 16-17** in making its decision.
- 5.3 The Committee must also have regard to the relevant representations made and the evidence it hears in reaching its decision.
- 5.4 The Committee must take such of the following steps if any, as it considers necessary for the promotion of the licensing objectives.
- 5.5 Modify conditions of the Licence;
- 5.6 Exclude a licensable activity from the scope of the licence:
- 5.7 Remove the designated premises supervisor;
- 5.8 Suspend the licence for a period not exceeding three months;
- 5.9 Revoke the licence.
- 5.10 The Committee should be mindful that in making their decision, whether to modify conditions or to reject the whole or part of the application, it must be necessary to do so to promote the licensing objectives, not just because it considers it desirable to do so.

5.11 N.B This application must be determined by no later than 06/02/2009

Author: Principal Licensing Officer
Date: 21/01/09
Reference:

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I Lisa Cocks

(Insert name of applicant)

apply for the review of a premises licence under section 51 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description Velvet Lounge 122a Fore Street	
Post town Exeter	Post code (if known) EX4 3JQ

Name of premises licence holder or club holding club premises certificate (if known) Mentor Inns LLP
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Number of premises licence or club premises certificate (if known) EXE - P00318

Part 2 - Applicant details

I am

Please tick yes

- 1) an interested party (please complete (A) or (B) below)
- a) a person living in the vicinity of the premises
 - b) a body representing persons living in the vicinity of the premises
 - c) a person involved in business in the vicinity of the premises
 - d) a body representing persons involved in business in the vicinity of the premises
- 2) a responsible authority (please complete (C) below)

3) a member of the club to which this application relates (please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick

Mr

Mrs

Miss

Ms

Other title
(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick yes

Current postal address if different from premises address

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

Name and address
Telephone number (if any)
E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Exeter City Council Civic Centre Paris Street Exeter EX1 1RQ
Telephone number (if any) 01392 265112
E-mail address (optional) lisa.cocks@exeter.gov.uk

This application to review relates to the following licensing objective(s)

Please tick one or more boxes

- | | |
|---|-------------------------------------|
| 1) the prevention of crime and disorder | <input type="checkbox"/> |
| 2) public safety | <input type="checkbox"/> |
| 3) the prevention of public nuisance | <input checked="" type="checkbox"/> |
| 4) the protection of children from harm | <input type="checkbox"/> |

Please state the ground(s) for review (please read guidance note 1)

Prevention of public nuisance arising from the provision of regulated entertainment from the premises. Namely the transmission of loud music, particularly bass, late at night causing sleep disturbance to nearby residents.

Please provide as much information as possible to support the application
(please read guidance note 2)

Since January 2008, complaints have arisen from 6 different properties within the area. Additionally a complaint has been received from a landlord of properties affected by the noise.

Following complaints to Environmental Health and the Out of Hours Service an investigation was carried out into the emission of late night music noise from the Velvet Lounge. I am of the opinion that a statutory noise nuisance has existed from the transmission of bass noise from the premises and is likely to recur.

On 12 November 2008 a Noise Abatement Notice was served on the Designated Premises Supervisor for the premises. This notice required the "reduction of amplified sound from the premises so that it does not constitute a statutory noise nuisance."

Since this date further monitoring has been carried out by way of officer visits and the installation of noise monitoring and recording equipment.

A call was received via the Out of Hours Service on 21 November 2008 and a visit was made by Community Patrol to a nearby resident. Loud music was verified from within the complainant's premises. Community Patrol approached the doormen at the Velvet Lounge and the bass was subsequently turned down.

Calls were also received on 29 November 2008 at approximately 01.32 and 03.00, these were not attended as staff were off duty.

Following a Companies House Search Noise Abatement Notices were served on Mentor Inns LLP as holders of the Premises Licence on 9 December 2008.

Please tick yes

Have you made an application for review relating to this premises before

If yes please state the date of that application

Day Month Year

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If you have made representations before relating to this premises please state what they were and when you made them
Not applicable

Please tick yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 3)

Signature of applicant or applicant's solicitor or other duly authorised agent (See guidance note 4). **If signing on behalf of the applicant please state in what capacity.**

Signature L. J. COCKS

Date 15 December 2008

Capacity Senior Environmental Protection Officer

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5)	
Post town	Post Code
Telephone number (if any)	
If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)	

Notes for Guidance

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.

Consent of premises licence holder to transfer

I/we Mentor Inns LLP

[full name of premises licence holder(s)]

the premises licence holder of premises licence number EXE-P00318

[insert premises licence number]

relating to

VIVO

THE VELVET LOUNGE, 122 FORE STREET, EXETER EX4 3JQ

[name and address of premises to which the application relates]

hereby give my consent for the transfer of premises licence number

EXE-P00318

[insert premises licence number]

to

*

CHARLES GORDON LEISURE LIMITED

[full name of transferee]

signed

name

PAUL MAHON

(please print)

on behalf of Mentor Inns LLP

dated

11-12-2008

Part A

Consent of Individual to Being Specified as Premises Supervisor

(1) Insert full name of prospective premises supervisor.

I (1) DUNCAN GORDON FORBES

(2) Insert home address of prospective premises supervisor.

of (2)
THE VELVET LOUNGE 122A FORE STREET EXETER DEVON EX4 3JQ

(3) Insert type of application.

hereby confirm that I give my consent to be specified as the designated premises supervisor in relation to the application for (3) VARIATION OF PREMISES LICENCE TO APPOINT NEW DESIGNATED PREMISES SUPERVISOR

(4) Insert name of applicant.

by (4) ~~GORDON CHARLES LEISURE LIMITED~~
CHARLES GORDON.

(5) Insert number of existing licence, if any.

relating to a premises licence (5) EXE-P00318

(6) Insert name and address of premises to which the application relates.

for (6) VELVET 122A FORE STREET EXETER DEVON EX4 3JQ

and any premises licence to be granted or varied in respect of this application

made by (4) ~~GORDON CHARLES LEISURE LIMITED~~
CHARLES GORDON.

concerning the supply of alcohol at (6)
VELVET 122A FORE STREET EXETER DEVON EX4 3JQ

(7) Delete as applicable.

I also confirm that I (7) ~~am applying for~~ (7) ~~intend to apply for~~ (7) [currently hold] a personal licence, details of which I set out below.

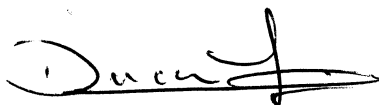
(8) Insert personal licence number, if any.

Personal licence number (8) CCC1/02246

(9) Insert name and address and telephone number of personal licence issuing authority, if any.

Personal licence issuing authority (9) Cardiff

Signed



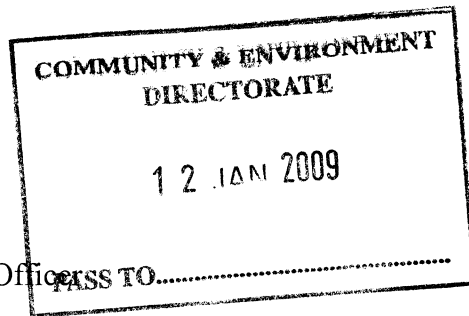
(10) Please print.

Name (10) DUNCAN GORDON FORBES

Dated 28.11.2008



**DEVON & CORNWALL
CONSTABULARY**



Mr I Ley
Principal Licensing Officer
Exeter City Council
Civic Centre
EXETER EX

Licensing Officer
Heavitree Rd Police Station
Heavitree Rd
EXETER
EX1 2LR

8 January 2009

Dear Mr Ley

**Premises Licence Review
Velvet Lounge (now known as Vivo), 122a Fore St, Exeter**

Further to the application for review of the premises licence for Velvet I write to outline the Police's position. Since January 2008 three calls have been received by the Police relating to the Velvet Lounge.

- **04/10/08** Customer reporting theft of a mobile phone.
- **17/10/08** Call received advising two drunken males had been refused entry to the premises and were becoming abusive toward doorstaff.
- **17/10/08** Call received stating male being assaulted (same incident as above)

No incidents of noise disturbance have been reported to the Police during the last twelve months.

We will not be attending the hearing, but if you feel we could provide any further information to assist the committee, please do not hesitate to contact me.

Yours sincerely

Lesley Carlo
Licensing Officer - Exeter



12/01/09

Review of Premises License EXE – P00318.

Please find below a representation in support of the review of premises license EXE – P00318.

After moving into the address Flat 4, 126a Fore Street, EX4 3JQ, on the 1st of August 2008 I soon was to experience the disturbance of loud music every Friday and Saturday coming from the Velvet Lounge 122a, Fore Street, Exeter, Ex4 3JS, this then led me to making a formal complaint with Exeter Environmental Health.

While the complaint was being processed the music continued to be excessive with loud rhythm 'bass' due to the type of music that is played at the premises – call it 'house', 'drum and bass', 'rave' or what you will.

Firstly the bass of this type of music is very repetitive with high beats per minute (b.p.m). Secondly, the bass is very often at a low frequency and so has a vibrating effect on objects that are not even in the immediate vicinity of the premises, i.e my neighbors' communal outside roofing, which when vibrates (very often) causes a very loud amplified vibration, adding to the whole disturbance.

Every Saturday usually at around 10 or 11pm, the above mentioned disturbance begins and continues usually getting louder and louder right through the night until 2am the following morning.

The nature of the music has to be noted also for it's other disturbing quality in that not only are it's beats at a high b.p.m but also in the fact that when it stops and goes quiet I know that the beats are soon to return and continue their disturbance – somewhat ~~physiologically~~ disturbing.

psychologically

The reason why I am making a complaint and supporting the review of premises is the fact that I cannot sleep during the above mentioned hours and thus causes a great disturbance to me. Knowing that every Saturday, and quite often Friday, I will not get any sleep until 2am the following morning is causing me great distress, and not something I should have to put up with! Last Sunday (11th January) the music/disturbance carried on until 3am, an hour later than usual.

Please note, I realize the premises have recently changed owners and are now called 'bar vivo' but the same problem is still apparent.




Jude Tsouris
Flat4, 126a Fore Street,
Exeter, EX4 3JQ.

The following residents of Fore Street, Exeter are in support of the license review:

NATALIE LUBLIENSKI, FLAT 7, 126A FORE STREET, EXETER

~~Abdullah~~

PETER VADASS, FLAT 1, 126A FORE STREET, EXETER



CHRIS NATHAN, 126A FORE ST, EXETER.

R. OLIVER FLAT 13 126A FORE STREET EXETER

V. Tsouris Flat 6 125A FORE STREET EXETER

S. Orchard, 2 the court, 122 Fore Street, Exeter

Luke Fomer, 2 the court, 122 fore street Exeter

DAVID OWENS, 122 FORE STREET

JADE SHIMELL 122 fore street Exeter EX4 3JA

17 Nuisance

17.1 To promote the licensing objectives applicants for licences for licensable activities will, if the Licensing Authority is engaged through relevant representations, be required to demonstrate the measures they have in place for the prevention of public nuisance. The impact of the licensable activities on people living in the vicinity should not be disproportionate or unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter. The prevention of public nuisance can include low-level nuisance affecting a few people living locally as well as a major disturbance affecting the whole community. It may also include the prevention of the reduction of the living and working amenity and environment of the interested parties.

18 Capacity

18.1 Where it is considered necessary to control the maximum numbers of persons attending premises for the purpose of preventing crime and disorder or for public safety the licensing authority will expect this to be addressed in the operating schedule. The licensing authority may, if engaged via relevant representations are accepted, impose conditions relating to maximum number of persons permitted to attend premises where it considers it necessary to prevent crime and disorder or for public safety purposes.

19 Vessels

19.1 The licensing authority when considering applications for premises licences in respect of vessels will give particular weight to the views of the Maritime and Coastguard Agency in respect of promoting the licensing objectives. Where in the opinion of the licensing authority any of the four objectives are undermined, and this cannot be resolved through the imposition of conditions, the application will be refused.

The following text does not form part of the Policy document and is included as guidance only

GLOSSARY

Club Premises Certificate – authorises the use of premises by a qualifying club for one or more licensable activity

DCMS - Department of Culture, Media, and Sport

Designated Premises Supervisor means the person (who must be a Personal Licence holder), in the case of premises selling alcohol, who will normally have been given the day to day responsibility for running the premises by the holder of the Premises Licence or will be the Premises Licence holder himself (who must also be a Personal Licence holder).

Entertainment Facilities – Facilities for enabling persons to take part in entertainment.

11.10 Further information for interested parties about the review process is available in "Guidance for interested parties: applying for a review" which can be found on the DCMS website.

REPETITIOUS REPRESENTATIONS

11.11 Relevance, vexation and frivolousness were dealt with in paragraphs 9.8 – 9.13 above. A repetitious representation is one that is identical or substantially similar to:

- a ground for review specified in an earlier application for review made in relation to the same premises licence which has already been determined; or
- representations considered by the licensing authority when the premises licence was first granted; or
- representations which would have been made when the application for the premises licence was first made and which were excluded then by reason of the prior issue of a provisional statement;

and, in addition to the above grounds, a reasonable interval has not elapsed since that earlier review or the grant of the licence.

11.12 Licensing authorities are expected to be aware of the need to prevent attempts to review licences merely as a second bite of the cherry following the failure of representations to persuade the licensing authority on earlier occasions. It is for licensing authorities themselves to judge what should be regarded as a reasonable interval in these circumstances. However, the Secretary of State recommends that more than one review originating from an interested party should not be permitted within a period of twelve months on similar grounds save in compelling circumstances or where it arises following a closure order.

11.13 The exclusion of a complaint on the grounds that it is repetitious does not apply to responsible authorities which may make more than one request for a review of a premises within a 12 month period.

11.14 When a licensing authority receives a request for a review from a responsible authority or an interested party or in accordance with the closure procedures described in Part 8 of the 2003 Act, it must arrange a hearing. The arrangements for the hearing must follow the provisions set out by the Secretary of State in regulations. The details may be viewed on the DCMS website. The Secretary of State considers it particularly important that the premises licence holder is fully aware of the representations made in respect of the premises, any evidence supporting the representations and that they or their legal representatives have therefore been able to prepare a response.

POWERS OF A LICENSING AUTHORITY ON THE DETERMINATION OF A REVIEW

11.15 The 2003 Act provides a range of powers for the licensing authority on determining a review that it may exercise where it considers them necessary for the promotion of the licensing objectives.

11.16 The licensing authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such warnings as an important mechanism for ensuring that the licensing

objectives are effectively promoted and that warnings should be issued in writing to the holder of the licence. However, where responsible authorities like the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to concerns, licensing authorities should not merely repeat that approach.

11.17 Where the licensing authority considers that action under its statutory powers are necessary, it may take any of the following steps:

- to modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- to exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- to remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- to suspend the licence for a period not exceeding three months;
- to revoke the licence.

11.18 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response.

11.19 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

11.20 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems which impact upon the licensing objectives.

11.21 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as a necessary means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is necessary and proportionate to the promotion of the licensing objectives.

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By virtue of paragraph(s) 1 of Part 1 of Schedule 12A of the Local Government Act 1972.

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